

REAL ESTATE APPRAISER EXAMINING BOARD[193F]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 543D.5, the Iowa Real Estate Appraiser Examining Board hereby gives Notice of Intended Action to amend Chapter 1, “Organization and Administration,” and Chapter 2, “Definitions,” and to adopt new Chapter 17, “Superintendent Supervision Standards and Procedures,” Iowa Administrative Code.

Consistent with 2016 Iowa Acts, House File 2436, the proposed amendments to Chapters 1 and 2 and the adoption of new Chapter 17 move the Board under the Banking Division of the Iowa Department of Commerce, subject the Board to the supervision and authority of the Superintendent of the Banking Division of the Iowa Department of Commerce (Superintendent), and articulate the standards and procedures by which such supervision shall occur.

The proposed amendments to Chapter 1 place the Board under the supervision of the Superintendent pursuant to 2016 Iowa Acts, House File 2436. The proposed amendment to Chapter 2 amends one definition and adopts two new definitions. The proposed adoption of Chapter 17 sets forth the standards and procedures by which the Superintendent shall supervise the Board.

Consideration will be given to all written suggestions or comments received no later than 4:30 p.m. on October 4, 2016. Comments should be addressed to Brandy March, Iowa Real Estate Appraiser Examining Board, 200 E. Grand Avenue, Third Floor, Suite 350, Des Moines, Iowa 50309. E-mail may be sent to brandy.march@iowa.gov.

A public hearing will be held on October 4, 2016, at 8:30 a.m. in the Professional Licensing Small Conference Room, 200 E. Grand Avenue, Third Floor, Des Moines, Iowa, at which time persons may present their views on the proposed amendments either orally or in writing. At the hearing, any person who wishes to speak will be asked to give the person’s name and address for the record and to confine remarks to the subject of the proposed amendments.

These amendments do not have any fiscal impact on the state of Iowa.

These amendments are subject to waiver or variance pursuant to 193F—Chapter 11.

After analysis and review of this rule making, no direct impact on jobs exists as these rules implement procedural changes only.

These amendments are intended to implement Iowa Code chapters 17A, 272C, 543D, and 546 and 2016 Iowa Acts, House File 2436.

The following amendments are proposed.

ITEM 1. Adopt the following new subrule 1.1(3):

1.1(3) All board action under Iowa Code chapter 543D and 193F—Chapter 17 shall be taken under the supervision of the superintendent, as provided in 2016 Iowa Acts, House File 2436.

ITEM 2. Rescind rule 193F—1.2(543D) and adopt the following new rule in lieu thereof:

193F—1.2(543D) Administrative committees.

1.2(1) The superintendent is vested with authority to review, approve, modify, or reject all board action pursuant to Iowa Code chapter 543D and 193F—Chapter 17. The superintendent may exercise all authority conferred upon the board and shall have access to all records and information to which the board has access. In supervising the board, the superintendent shall independently evaluate the substantive merits of recommended or proposed board actions which may be anticompetitive.

1.2(2) In performing its duties and in exercising its authority under Iowa Code chapter 543D and 193F—Chapter 17, the board may take action without preclearance by the superintendent if the action is ministerial or nondiscretionary. As used in this chapter, “ministerial or nondiscretionary” shall include any action expressly required by state or federal law, rule, or regulation; by the AQB; or by the appraisal subcommittee. The board may, for example, grant or deny an application for initial or reciprocal certification as a real estate appraiser, an application for registration as an associate real estate appraiser, or an application for a temporary practice permit by an out-of-state appraiser, on any ground expressly required by state or federal law, rule, or regulation; by the AQB; or by the appraisal subcommittee.

1.2(3) Prior to taking discretionary action under Iowa Code chapter 543D and 193F—Chapter 17, the board shall secure approval of the superintendent if the proposed action is or may be anticompetitive, as provided in 193F—Chapter 17. As used in this chapter, “discretionary” shall include any action that is authorized but not expressly required by state or federal law, rule, or regulation; by the AQB; or by the appraisal subcommittee. Examples of discretionary action include orders in response to petitions for rule making, declaratory orders, or waivers or variances from rules, rule making, disciplinary proceedings against licensees, administrative proceedings against unlicensed persons, or any action commenced in the district court.

1.2(4) Determining whether any particular action is or may be anticompetitive is necessarily a fact-based inquiry dependent on a number of factors, including potential impact on the market or restraint of trade. With respect to disciplinary actions, for instance, a proceeding against a single licensee for violating appraisal standards would not have an impact on the broader market and would accordingly not be an anticompetitive action. Commencement of disciplinary proceedings which affect all or a substantial subset of appraisers may have a significant market impact. When in doubt as to whether a proposed discretionary action is or may be anticompetitive, the board may submit the proposed action through the preclearance procedures outlined in 193F—Chapter 17.

1.2(5) A person aggrieved by any final action of the board taken under Iowa Code chapter 543D or 193F—Chapter 17 may appeal that action to the superintendent within 20 days of the date the board issues the action.

a. The appeal process applies whether the board action at issue was ministerial or nondiscretionary, or discretionary, and whether the proposed action was or was not submitted through a preclearance process before the superintendent.

b. No person aggrieved by a final action of the board may seek judicial review of that action without first appealing the action to the superintendent, as more fully described in 193F—Chapter 17.

c. Final board action which is ministerial or nondiscretionary is immediately effective when issued by the board but is subject to appeal to the superintendent.

d. Final board action which is discretionary shall be effective upon the expiration of 20 days following issuance of the board’s action if not timely reviewed by or appealed to the superintendent or upon final action by the superintendent if timely reviewed or appealed.

ITEM 3. Amend rule 193F—2.1(543D) as follows:

193F—2.1(543D) Applicability. The following definitions shall be applicable to the rules of the real estate appraiser examining board.

“Appraisal Foundation” means the Appraisal Foundation ~~established~~ incorporated as an Illinois not-for-profit corporation on November 30, 1987, ~~as a not-for-profit corporation under the laws of Illinois to develop qualifications and criteria for the appraisal profession.~~

“Appraisal subcommittee” means the appraisal subcommittee of the Federal Financial Institutions Examination Council.

“AQB” means the Appraiser Qualifications Board of the Appraisal Foundation.

“ASB” means the Appraisal Standards Board of the Appraisal Foundation.

“Associate real property appraiser” or *“associate appraiser”* means an individual who has registered with the board as an associate real property appraiser, as defined in Iowa Code section 543D.2(5), and who is training to become a certified residential or certified general real property appraiser.

“*Certified appraiser*” means an individual who has been certified in one of the following two classifications:

1. The certified residential real property appraiser classification, which is limited to the appraisal of one to four residential units without regard to transaction value.

2. The certified general real property appraiser classification, which applies to the appraisal of all types of real property.

“*FIRREA*” means the Financial Institutions Reform Recovery and Enforcement Act of 1989.

“*Knowingly*” means done with awareness and deliberateness.

“*Law*” means the “Iowa Voluntary Appraisal Standards and Appraiser Certification Law of 1989,” Iowa Code chapter 543D.

“*Superintendent*” means the superintendent of banking or the superintendent’s designee. The designee shall not be a certified or licensed real estate appraiser, a registered associate real estate appraiser, or a trainee real estate appraiser in any jurisdiction.

“*USPAP*” means the Uniform Standards of Professional Appraisal Practice published by the Appraisal Foundation.

This rule is intended to implement Iowa Code section 543D.2.

ITEM 4. Adopt the following **new** 193F—Chapter 17:

CHAPTER 17

SUPERINTENDENT SUPERVISION STANDARDS AND PROCEDURES

193F—17.1(543D) Superintendent supervision standards. The level of the superintendent’s supervisory scrutiny of board actions will vary depending on the nature of the board action, the surrounding circumstances, and whether the action is or may be anticompetitive. In general, the superintendent will independently evaluate both the procedures and the substantive merits of board actions.

17.1(1) Ministerial and nondiscretionary board actions. Board actions which are ministerial or nondiscretionary, as provided in 193F—subrule 1.2(2), shall be monitored to ensure that such actions are consistent with the mandates required by state or federal law, rule, or regulation; by the AQB; or by the appraisal subcommittee.

17.1(2) Discretionary board actions. The superintendent shall independently assess discretionary board actions, as provided in 193F—subrule 1.2(3), to determine whether an action reflects clearly articulated state policy as the inherent, logical, or ordinary result of the exercise of authority delegated to the board by the legislature and is not the result of private interests attempting to restrain trade or otherwise pursue anticompetitive objectives that are contrary to state policy goals. Discretionary board actions which are not anticompetitive shall be monitored by the superintendent but will only be subjected to preclearance procedures if specifically requested by the board or at the superintendent’s election. Discretionary board actions that are or may be anticompetitive shall require the superintendent’s prior written approval.

17.1(3) Information review and gathering. When monitoring or evaluating board actions, the superintendent may rely on the information provided by the board in support of the board’s actions if the superintendent is satisfied that the information is sufficient for an independent, de novo evaluation of the substantive merits of the board’s action. The superintendent may supplement the board’s information and gather additional information if deemed necessary or desirable.

17.1(4) Written decisions. Following the superintendent’s independent evaluation of the substantive merits of board actions, the superintendent shall issue a written decision approving, modifying, or disapproving the recommended action, and explaining the reasons and rationale for such decision. This requirement shall apply when the superintendent is requested to provide preclearance for a board action and when the superintendent evaluates a final board action upon review by or appeal to the superintendent.

193F—17.2(543D) Procedures for superintendent supervision.

17.2(1) *Ministerial or nondiscretionary board actions.*

a. The superintendent's monitoring of ministerial or nondiscretionary board actions shall be flexible and designed to spot check compliance. The board shall provide any information that the superintendent requests to adequately monitor such actions. Final board action which is ministerial or nondiscretionary may be appealed to the superintendent by an aggrieved person within 20 days of the issuance of the board action. The written notice of appeal shall be filed with the superintendent and served upon the board within such 20-day period and shall specify:

- (1) The name of the person initiating the appeal;
- (2) The board action which is being appealed;
- (3) The specific facts or law alleged to be in error in the board action;
- (4) The relief sought; and
- (5) The grounds for such relief.

b. The board may respond to the notice of appeal within 20 days of its receipt of the appeal. The superintendent shall issue a written decision as provided in subrule 17.1(4).

17.2(2) *Preclearance.* When the board seeks preclearance of a proposed board action, the board shall submit a written report which identifies the proposed action, describes the basis and support for the action, outlines the persons or markets which may be affected by the action, and attaches sufficient information from which the superintendent can make an independent, de novo evaluation of the substantive merits of the proposed action. The superintendent shall issue a written decision as provided in subrule 17.1(4).

17.2(3) *Review or appeal of final, discretionary board action.*

a. Final, discretionary board action may be reviewed by or appealed to the superintendent within 20 days of the issuance of the board action. Such decisions shall be provided to the superintendent when issued to affected persons. If the final board action is not a contested case decision, the written notice of appeal shall be filed with the superintendent and served upon the board within such 20-day period, and shall specify:

- (1) The name of the person initiating the appeal;
- (2) The board action which is being appealed;
- (3) The specific facts or law alleged to be in error in the board action;
- (4) The relief sought; and
- (5) The grounds for such relief.

b. A review initiated by the superintendent shall be in writing and shall inform the board and affected persons of the nature of the superintendent's concerns. The board may respond to the superintendent's review or notice of appeal within 20 days of the board's receipt of the appeal. A person notified of a superintendent's review may respond to the superintendent's review within 20 days of the issuance of the review. The superintendent shall issue a written decision as provided in subrule 17.1(4).

17.2(4) *Review or appeal of contested case decision.*

a. All board decisions in a contested case, whether by consent or following hearing, are proposed decisions and shall be provided to the superintendent when issued.

b. Any aggrieved party may appeal the proposed decision to the superintendent within 20 days after issuance of the proposed decision. The superintendent may initiate a review of the proposed decision on the superintendent's own motion at any time within 20 days following issuance of such decision.

c. A notice of appeal must be signed by the appealing party or a representative of that party and contain a certificate of service. The notice shall specify:

- (1) The parties initiating the appeal;
- (2) The proposed decision or order which is being appealed;
- (3) The specific findings or conclusions to which exception is taken and any other exceptions to the decision or order;
- (4) The relief sought; and
- (5) The grounds for such relief.

d. A notice of superintendent's review shall identify the superintendent's concerns with sufficient detail from which the board or a party can respond.

e. A party may request the taking of additional evidence only by establishing that the evidence is material, that good cause existed for the failure to present the evidence at the hearing, and that the party has not waived the right to present the evidence. A written request to present additional evidence must be filed with the notice of appeal or, by a nonappealing party, within 14 days of service of the notice of appeal. The superintendent may preside over the taking of additional evidence or may remand a case to the board for further hearing.

f. The superintendent shall issue a schedule for consideration of the review or appeal.

g. Unless otherwise ordered, within 20 days of the notice of appeal or order for review, the board and each appealing party may file briefs. Within 20 days thereafter, the board or any party may file a responsive brief. Briefs shall cite any applicable legal authority and specify relevant portions of the record in that proceeding. Written requests to present oral argument shall be filed with the briefs. The superintendent may resolve the appeal or review on the briefs or provide an opportunity for oral argument. The superintendent may shorten or extend the briefing period as appropriate.

h. The record on appeal or review shall be the entire record made at hearing.

i. The superintendent shall issue a written decision as provided in subrule 17.1(4).

These rules are intended to implement 2016 Iowa Acts, House File 2436.